

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

COASTAL LUMBER COMPANY

Employer

and

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO, CLC

**Case** 6-RC-11850

Petitioner

**SUPPLEMENTAL DECISION ON REMAND**

This matter involves the remand of the above-captioned case by the Board to the undersigned and the reopening of the record to consider the supervisory status of six individuals in light of the Supreme Court's decision in NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001).<sup>1</sup>

The undersigned Regional Director issued a Decision and Direction of Election in the above-captioned case on August 11, 2000. Pursuant thereto, an election was conducted on September 7, 2000, and the Petitioner was certified on September 20, 2000, as the exclusive collective-bargaining representative of the unit found appropriate therein. Thereafter, on November 8, 2000, a Complaint issued in Case 6-CA-31698, alleging that the Employer had violated Section 8 (a)(5) of the Act by refusing the Union's request to bargain following certification. The Board granted the General Counsel's Motion for Summary Judgment in that case, finding that the Employer had not raised any representation issue that was properly litigable in the unfair labor practice proceeding. Coastal Lumber Company, 332 NLRB No. 169

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<sup>1</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the

(2001). The Employer then petitioned for judicial review of the Board's Order. While the case was pending before the Court of Appeals, the Supreme Court issued its decision in NLRB v. Kentucky River Community Care, Inc., supra, in which the Court rejected the Board's categorical exclusion of professional judgments from the term "independent judgment" as utilized in Section 2(11) of the Act.

Following issuance of the Supreme Court's decision, the United States Court of Appeals for the Fourth Circuit found that, "[a]lthough portions of the regional director's opinion in this case seem to use an analysis that perhaps is unaffected by the Court's holding in Kentucky River, some of the conclusions could be understood to rest upon the type of analysis that was rejected by the Supreme Court in Kentucky River." Because it found that the Board's determination concerning the supervisory status of the six individuals at issue herein could be read to have been premised in part on an incorrect legal standard, affected by the Supreme Court's decision in Kentucky River, the Fourth Circuit remanded the case to the Board for reconsideration in light of the Supreme Court's decision in that case. Coastal Lumber Company, 24 Fed. Appx.120, 2001 WL 1334194 (4<sup>th</sup> Cir. 2001) (unpublished).

On February 22, 2002, the Board advised the parties that it was accepting the remand from the Court of Appeals and invited the parties to submit statements of position concerning the remand. The General Counsel moved, inter alia, that the Board vacate the Decision and Order in Case 6-CA-31698 and remand Case 6-RC-11850 to the Regional Director for further appropriate proceedings.

By Supplemental Decision and Order dated April 19, 2002, the Board granted the General Counsel's Motion to Vacate the Board's Decision and Order. In addition, the Board ordered that the record in Case 6-RC-11850 be reopened, and remanded the case to the undersigned Regional Director for further consideration and to take additional evidence, if

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Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by July 9, 2002.

appropriate, on the issue of “whether the 6 named individuals at Employer-Respondent’s facility ‘assign’ and ‘responsibly direct’ other employees and on the scope or degree of ‘independent judgment’ used in the exercise of such authority.”

The Employer and the Petitioner thereafter advised the Region that they did not seek to reopen the hearing to take additional evidence on the remanded issue. Both parties timely submitted supplemental briefs on the remanded issue, which have been carefully considered by the undersigned.

The evidence and the arguments presented by the parties with respect to each of the six named individuals has been carefully evaluated in light of Kentucky River. As discussed below, I have concluded that none of the six individuals are statutory supervisors, and therefore that they should be included in the unit. Accordingly, I reaffirm my original decision with respect to these individuals.

I note that my original decision in this matter was based upon an independent analysis of each indicia of supervisory status which the Employer asserted was possessed by each of the disputed individuals. My analysis was not based upon the type of “categorical exclusion” rejected by the Court in Kentucky River. Moreover, unlike Kentucky River, which involved professional employees in a health care setting, this case involves the traditional type of industrial setting in which, as noted in my original decision in this matter, Congress expressed its intention that “straw bosses, leadmen, set-up men and other minor supervisory employees” should not be excluded from the protections of the Act. Chicago Metallic Corporation, 273 NLRB 1677, 1688 (1985). See also NLRB v. Bell Aerospace Co., 416 U.S. 267, 283 (1974)(“straw bosses” not included within the definition of supervisor under the Act).

The six individuals involved herein are Lead Chop Saw Operator Greg Seese, Lumber Grader Brian Summers, Quality Control Inspectors Winnie Watkins and Linda Seese, and Millwrights George Goff and James Biser.

## OVERVIEW OF LEGAL PRINCIPLES

In enacting Section 2(11)<sup>2</sup> of the Act, Congress emphasized its intention that only truly supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees”. See Senate Rep. No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess. 4, reprinted in 1 NLRB Legislative History of the Labor Management Relations Act, 1947. See also NLRB v. Bell Aerospace Co., supra at 280-281, 283; Chicago Metallic Corp., supra at 1688. Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981). Thus, the exercise of “supervisory authority” in a merely routine, clerical or perfunctory manner does not confer supervisory status. Feralloy West Corp. and Pohang Steel America, 277 NLRB 1083, 1084 (1985). Moreover, in the event that “the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

In determining the supervisory status of the individuals in issue, I am guided by the principles established by the Board in the above cases as well as the holding of the Supreme Court in Kentucky River. Initially, in Kentucky River, the Court approved the Board’s well-established precedent that the party asserting supervisory status has the burden of proof to establish such status. Kentucky River, supra at 711-712. Absent detailed, specific evidence of

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<sup>2</sup> Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

independent judgment, mere inference or conclusionary statements without supporting evidence are insufficient to establish supervisory status. Quadrex Environmental Co., 308 NLRB 101 (1992). Here, the Employer asserts that the individuals at issue are statutory supervisors and, therefore, bears the burden of proof to establish supervisory status.

A statutory supervisor must possess at least one of the indicia specified in Section 2(11) of the Act. Kentucky River, supra at 713. Moreover, a statutory supervisor must exercise supervisory indicia in a manner requiring the use of independent judgment. With respect to most Section 2(11) indicia, the use of independent judgment is self-evident. However, when considering the supervisory authority to responsibly direct, it is more difficult to define the use of independent judgment. In Kentucky River, the Supreme Court rejected the Board's categorical conclusion that individuals do not use "independent judgment" when they exercise "ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards." Kentucky River, supra at 713.

The Supreme Court agreed with the Board that the term "independent judgment" is ambiguous with respect to the degree of discretion required for supervisory status, and that many nominally supervisory functions may be performed without the exercise of such a degree of judgment or discretion as would warrant a finding of supervisory status under the Act. Kentucky River, supra at 713-714. The Court also recognized that the degree of judgment ordinarily required to conduct a particular task may be reduced below the statutory supervisory threshold by detailed orders and regulations issued by an employer. Id. See also Dynamic Science, Inc., 334 NLRB No. 57 (2001) (citing Kentucky River). Moreover, in Kentucky River, the Court held that the Board has discretion to determine the scope of judgment that qualifies as independent judgment within the meaning of Section 2(11) of the Act. Kentucky River, supra at 713. In addition, the Court suggested that an appropriate limiting interpretation of the supervisory function of responsible direction might be accomplished "by distinguishing

employees who direct the manner of others' performance of discrete *tasks* from employees who direct other *employees* as [Section] 2(11) requires." Kentucky River, supra at 720.<sup>3</sup>

Mindful of these principles, I have re-examined the evidence relating to the remanded issue of whether the individuals discussed herein assign and responsibly direct employees and the scope or degree of independent judgment they exercise in so doing.

#### GREG SEESE

Greg Seese is the lead chop saw operator on the second shift in the Rough Mill. In that position, Seese's supervisor informs him and the crew of what the orders are, what types of wood are to be cut, and generally what the plans are for that day. Seese informs the other employees of what the specifications are, the grades of lumber needed, and other requirements based upon the production orders. The employees in his department appear to be familiar with the tasks required and do not need to be regularly supervised, and the assignment of tasks is based upon production schedules set by management. In addition to performing a significant amount of production work himself, Seese's work may also involve inspecting the work of an employee, instructing an employee in the operation of a machine, or reassigning the employee to a different machine based upon the work orders in effect for that day. There is no evidence that Seese determines the work orders for the day, or that he may cancel or in any way change them.

Accordingly, it appears that Seese is primarily engaged in directing and assigning discrete tasks to individuals on his work crew in order to satisfactorily complete job orders and assignments which have been ordered and set by management. Any changes in the production schedule are also mandated by management, and it is Seese who implements the changes. Under these circumstances I find that Seese functions as a leadman and that his supervisory

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<sup>3</sup> Throughout its Supplemental Brief in this matter, the Employer appears to argue that the Court determined in Kentucky River that every individual who directs the work of others based on the possession of greater experience or skills must be found to be a supervisor within the meaning of Section 2(11) of the Act. This was not the holding of Kentucky River.

authority and responsible direction of the work crew is constrained by management's determinations with respect to the work to be accomplished. Chrome Deposit Corporation, 323 NLRB 961 (1997). I find that the level of Seese's judgment in this respect does not warrant a finding of true supervisory authority. See Kentucky River, supra at 720.

In addition, Seese has at times been assigned as the Lead Person for his shift. In this capacity he has "signed off" on the Employer's "Position Certification Checklist". As noted in my original Decision and Direction of Election in this matter, this document provides guidelines to an employee acting as Lead Person in the areas of absenteeism, violence, insubordination, drug and alcohol use, medical emergency, fire, natural disaster, mechanical breakdowns, trespassing and other emergencies. The Position Certification Checklist states, with respect to every situation described, that the Lead Person is to contact a supervisor. This contact is to be made immediately in some circumstances, and after taking specific actions prescribed by the Checklist in other circumstances.

Indeed, the introductory paragraphs of the Position Certification Checklist clearly establish the limited authority of individuals serving as lead persons. The Checklist provides that:

In some instances, it may be necessary to have a few employees work past their normal shift or work on a Friday or Saturday. Furthermore, if the tasks or work to be completed are straightforward and routine in nature, a Lead Person may be assigned as the senior employee present in lieu of a Supervisor. In these cases, the Lead Person will be clearly identified by management and will be granted the authority to direct the efforts of the other employees to complete the assigned tasks.

Since a Lead Person may encounter circumstances unlike those experienced during his/her normal duties, the following guidelines were developed to give direction should certain circumstances occur.

I therefore find that Seese's responsibility and authority as Lead Person are significantly circumscribed and limited by the Position Certification Checklist. Seese's judgments while acting as Lead Person are so constrained by the requirements of the Employer that any judgment he may exercise in those circumstances falls below the requisite threshold of

supervisory authority. Such mechanical application of the Employer's regulations cannot be construed as supervisory authority. Kentucky River, supra at 713-714.

Accordingly, for the reasons set forth herein, as well as in my original decision in this matter, I find that the Employer has not satisfied its burden of proving supervisory authority with respect to Greg Seese.

#### BRIAN SUMMERS

Brian Summers is the lumber inspector for the facility and regularly works with Donny Johnson, the forklift operator, unloading lumber as it comes in and moving it to various locations within the lumber delivery area for further use. Summers works directly with Johnson moving and stacking the lumber. At times, Summers moves to the production floor to assist in basic production line work. Summers may reject a load of lumber in the course of his everyday job functions, but in those circumstances he informs his supervisor, Ed Carr, who then discusses the situation with sales manager Brian Brown. Carr and Brown make the ultimate determination with respect to the lumber.

The record does not establish that Summers possesses and exercises any of the indicia of supervisory authority with respect to Johnson. Indeed, the two frequently discuss operations and make decisions together concerning the appropriate placement or movement of the lumber. While Summers may request that Johnson work overtime on occasion, he has no disciplinary authority if Johnson refuses the request. Accordingly, I find that the Employer has not sustained its burden of proving the supervisory status of Summers. See Millard Refrigerated Services, 326 NLRB 1437 (1998).

Summers has occasionally acted as Lead Person on Saturdays when a small crew is in the plant.<sup>4</sup> During those times, Summers is directly involved in production work and informs

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<sup>4</sup> Contrary to the implication in the Employer's Supplemental Brief that my original finding regarding Summers' work on Saturdays was in error, I note specifically that Summers testified that in the past year he had worked only five or six times as the lead person on Saturdays. While Summers has worked many Saturdays in the facility, the record is clear that on those occasions he is primarily engaged in



employees what work to do based on the work orders that have come in and been previously set up by Supervisor Carr. In those circumstances Summers has “signed off” on and is governed by the Employer’s Position Certification Checklist, as described above. Summers has not been involved in any of the above-described checklist situations.

With respect to the limited times in which Summers acts as the Lead Person, his responsibilities have been limited to a few circumstances during which he has told employees what work to do based on the work orders that have come in. His authority in all other respects is limited and circumscribed by the detailed directives issued by the Employer in its “Position Certification Checklist”. I note particularly that the Checklist specifically provides that an employee will only be assigned to a lead position “if the tasks or work to be completed are straightforward and routine in nature.” I therefore find that Summers does not exercise such responsible direction of employees as to confer supervisory authority. See Dynamic Science, Inc., 334 NLRB No. 57 (2001). See also Chevron Shipping Co., 317 NLRB 379, 381 (1995), cited with approval in Kentucky River.

Accordingly, for the reasons set forth herein, as well as in my original decision in this matter, I find that the Employer has not satisfied its burden of proving supervisory authority with respect to Brian Summers.

#### QUALITY CONTROL INSPECTORS

Winnie Watkins and Linda Seese are the quality control inspectors at the facility. Both employees work in the rough mill area of the facility, and their primary responsibilities are to visually monitor the quality of the material coming off the belt lines and going to the sorting stations. The Quality Control Inspectors may require more thorough audits of the product or of an individual’s particular work when the reject level falls below the quality control levels set by management. The Quality Control Inspectors cannot discipline an employee for poor work

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maintenance department work and is working in order to earn extra income. He has no supervisory responsibilities whatsoever with respect to the maintenance work.

product, but may inform management. As the work progresses through the various stations, the Quality Control Inspectors have the authority to temporarily reassign employees doing stacking work at the bins to move from one bin to another, or from the bins to a round table area where stacking work is also performed.<sup>5</sup> That reassignment is effected in the event that the bins or round table areas are backed up or overflowing, or due to changes in the orders coming in for the day and their assessment of which stacker would work best in the new area. As found in my original decision in this matter, there is no indication that the Quality Control Inspector's decision in this regard is based on her assessment of an individual stacker's skill. All such reassignments are done to facilitate the flow of work and ensure timely output of the product.

Quality Control Inspectors may also adjust employee "squabbles". This primarily entails moving individual employees away from each other when there are interpersonal disagreements. Quality Control Inspectors are to report rules infractions to a supervisor. Such limited authority to resolve personality conflicts or "squabbles" between employees does not establish supervisory authority. Ken-Crest Services, 335 NLRB No. 63 (2001).

Based on the above, and the record as a whole, I find that the Quality Control Inspectors do not possess sufficient authority to warrant a finding of supervisory status. The Quality Control Inspectors, in the exercise of their normal job functions, performed pursuant to precise management requirements, may require more thorough inspection of the product being processed, and may note areas in which an employee is having difficulties. I find that the Quality Control Inspectors' role in directing employees is limited and circumscribed by the Employer's detailed orders and regulations. This degree of judgment falls below the threshold required to establish statutory supervisory authority. Dynamic Science, Inc., supra; Kentucky River, supra. Moreover, the Quality Control Inspector's reassignment of individuals in order to

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<sup>5</sup> The record reveals that the product is machined by various types of saws, then propelled by air into the bins from which the stackers sort the product. A change in the work order for the day might necessitate the use of a different machine to cut and process the wood before it is propelled into the bins. Quality Control Inspectors have no authority with respect to employees operating the various saws.

timely fulfill work requirements is not performed with such independent judgment as to warrant a finding of supervisory authority. In this respect, it appears that the work itself is routine and predictable. The record does not reveal variability in the skill level of employees and appears to indicate that employees in this area are familiar with the required tasks at each work station. See, e.g. Clark Machine Corp., 308 NLRB 555 (1992); Esco Corporation, 298 NLRB 837, 839 (1990).

Accordingly, for the reasons set forth herein, as well as in my original decision in this matter, I find that the Employer has not met its burden of proving the supervisory authority of the Quality Control Inspectors.

#### MILLWRIGHTS

George Goff and James Biser are the millwrights in the facility. Both individuals perform hands-on work as mechanics, while Biser has the additional tasks of maintaining records and logs and ordering parts. Both Goff and Biser report to Ray Stinson, the Plant Manager.

Goff, by virtue of seniority and superior mechanical skills, performs the required maintenance in the plant. Goff may write notes concerning maintenance problems or issues in a maintenance log book. There is no evidence that Goff currently assigns work to the second shift maintenance employee. Goff may also direct a crew performing special maintenance work on an off shift, for a special project. There is no indication that Goff establishes the necessity for such a project or chooses the employees who will perform the task. In the performance of his regular maintenance responsibilities, Goff may ask the employee who normally works on that machine to assist him with the maintenance. It is thus apparent that, at most, Goff may direct other employees in the performance of specific tasks, on a sporadic and irregular basis. Such limited direction of employees in the performance of discrete tasks does not warrant a finding of supervisory authority. Kentucky River, supra at 720; Chrome Deposit Corporation, supra.

Under these circumstances, for the reasons set forth herein, and in my original decision in this matter, I find that the Employer has not met its burden of proving that George Goff is a supervisor within the meaning of the Act.

With respect to Biser, I note initially, as stated in my original decision in this matter, that Biser cannot hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline employees, or adjust their grievances. He is not involved in the making of any business decisions for the Employer, nor in the establishment of management policies. Biser insures that all the machines are running, and that the plant is maintained in a safe manner. In so doing, he performs hands-on maintenance work and, in addition, he performs clerical functions involving the maintenance of logs and ordering of parts and machinery under \$500. Biser informs Goff what work is to be done on a particular day. To the extent that he directs the work of Goff, this is done on a collaborative basis, after discussion with Goff. In addition, Biser and Goff may direct the work of the second shift maintenance person and the tool room person in the performance of specific tasks or assignments.

Biser thus collaboratively maintains the flow of work for the maintenance department, and on limited occasions has directed employees on particular projects. Biser's work consists of the routine performance of maintenance work in the facility by himself and with other experienced maintenance employees. There is no indication that Biser's authority extends to decisions regarding problems or extraordinary situations. Biser's responsibility for the maintenance department employees is therefore limited to the direction of discrete tasks on an infrequent basis. Under such circumstances, he does not possess true supervisory authority. See Kentucky River, supra.

Accordingly, for the reasons set forth herein, and in my original decision in this matter, I find that the Employer has not sustained its burden of proving the supervisory status of James Biser.

For the reasons set forth above, and based on the record as a whole, I find that the Employer has failed to meet its burden of affirmatively establishing that the individuals at issue herein are supervisors within the meaning of the Act.

Thus, having reconsidered the matter in light of the Order Remanding, and Kentucky River, I conclude that Greg Seese, Brian Summers, Winnie Watkins, Linda Seese, George Goff and James Biser are not supervisors within the meaning of the Act. Accordingly, I hereby reaffirm my original Decision in this matter.<sup>6</sup>

Dated at Pittsburgh, Pennsylvania, this 25th day of June, 2002.

/s/ Gerald Kobell

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Gerald Kobell  
Regional Director, Region Six

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<sup>6</sup> In light of my findings herein, and noting that this issue was not remanded to the undersigned for consideration, I need not address the Employer's arguments that the election conducted in this matter must be set aside because supervisors were included in the unit.